

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RICKEY LEE MARTIN, #413601

Plaintiff,

CASE No. 1:21-CV-330

v.

HON. ROBERT J. JONKER

UNKOWN HENDERSON, et al.,

Defendants.

ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION

Plaintiff Rickey Martin is currently a prisoner is in the custody of the Michigan Department of Corrections. He is suing Corrections Officers Henderson and DeBoer on the theory that Defendants falsely charged him with a misconduct violation in retaliation for Plaintiff exercising his First Amendment rights and that Defendants also engaged in a civil conspiracy to deprive Plaintiff of his right to be free from unlawful retaliation. Defendants move for summary judgment on exhaustion. ECF No. 21. The Magistrate Judge issued a Report and Recommendation the Court deny this motion. ECF No. 27.

The Court has reviewed Magistrate Judge Kent's Report and Recommendation (ECF No. 27), Defendants' Objections (ECF No. 30) and Plaintiff's Reply (ECF No. 33). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Defendants' objections. The Court finds the Magistrate Judge's Report and Recommendation factually sound and legally correct. Specifically, the Magistrate Judge recommends that the court deny Defendants' motion for summary judgment on the First Amendment retaliation and conspiracy claims. As the Magistrate Judge observes, the Defendants do not address the conspiracy claims at all. ECF No. 27, PageID.195-96. On the retaliation claims, the Magistrate Judge rejected the Defendants' exhaustion argument. *Id.* at PageID.196-98. The Magistrate Judge carefully and thoroughly considered the evidentiary record, the parties' arguments, and the governing law.

In their objections, Defendants primarily reiterate and expand arguments they have already presented. Specifically, Defendants object that the Magistrate did not properly interpret *Parker v. Turner*, an authority upon which they relied in their original brief. Compare ECF No. 30 with ECF No. 22, PageID.97. Contrary to Defendants' assertions, *Parker* is distinguishable from this case for the reasons the Magistrate asserts. In *Parker*, the ticket for which a hearing was held was dismissed on procedural, rather than substantive grounds. See 2022 WL 722192 at *3-4. In this case, Plaintiff was found "not guilty" of the charge. ECF No. 25, PageID.155. During that hearing, Plaintiff has presented evidence that he raised the retaliation issue at the misconduct hearing, which

as the Magistrate Judge properly explains, the Sixth Circuit has held is “the only avenue” for exhausting such a claim. *See* ECF No. 27, PageID.196; *see also Siggers v. Campbell*, 652 F.3d 681, 694 (6th Cir. 2011). The Court does not agree that *Parker* can be read to require the Plaintiff do more than comply with that requirement. Nothing in Plaintiff’s objections change the fundamental analysis. For the very reasons the Report and Recommendation details, this Court agrees with the recommendations.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 27) is **APPROVED AND ADOPTED** as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendants Motion for Summary Judgment (ECF No. 21) is **DENIED**.

Dated: October 18, 2022

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE